

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

March 3, 2020

Lyle W. Cayce
Clerk

No. 19-20532
Summary Calendar

KIRK L. KERN; JACQUELINE KERN,

Plaintiffs - Appellants

v.

WELLS FARGO BANK NATIONAL ASSOCIATION,

Defendant - Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:18-CV-1355

Before STEWART, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:*

Plaintiffs-Appellants Kirk L. Kern and Jacqueline Kern (the “Kerns”) filed this lawsuit against Defendant-Appellee Wells Fargo Bank National Association (“Wells Fargo”). The complaint alleges that Wells Fargo fraudulently induced the Kerns into defaulting on their mortgage. Upon motion, the district court granted summary judgment in Wells Fargo’s favor. We affirm the district court’s summary judgment.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 19-20532

I.

The Kerns executed a Fixed Rate Note and a deed of trust in favor of Wells Fargo, to secure a residential property located at 16219 Champion Drive, Spring, Texas 77379 (the “Property”). They executed these instruments in exchange for a \$250,000.00 home mortgage loan from Wells Fargo.

Between April 2009 and April 2010, the Kerns enrolled in a Temporary Modification program that reduced the Kerns’ monthly mortgage payments. After the Temporary Modification period lapsed, the Kerns began making payments in accordance with the original mortgage terms. Over a year later, in May 2011, the Kerns defaulted on their mortgage. After this point, Wells Fargo attempted to re-enroll the Kerns in a similar payment modification program but were unsuccessful for various reasons including an incomplete application and insufficient income to support the modification. Consequently, Wells Fargo proceeded with foreclosure proceedings.

The Kerns responded by initiating this action for fraud in state court in Harris County, Texas—which Wells Fargo later removed. Once before the district court, Wells Fargo moved for summary judgment, which the court granted. The district court’s reasoning is based on the Kerns’ failure to adduce evidence demonstrating a genuine dispute as to any material issues of fact.

The Kerns now appeal *pro se*. Upon review of the record and their appellate brief, it appears that the Kerns’ appellate brief is identical to that of their opposition brief filed before the district court. The Kerns also elected not to file a Reply brief. Therefore, they make no arguments that effectively challenge the district court’s reasoning and conclusion.

II.

We review grants of summary judgment *de novo*, applying the same standard as the district court. *Antoine v. First Student Inc.*, 713 F.3d 824, 830 (5th Cir. 2013); *see also* FED. R. CIV. P. 56(a) (summary judgment is proper “if

No. 19-20532

the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law”).

III.

After considering the parties’ arguments as briefed on appeal, and after reviewing the record, the applicable law, and the district court’s judgment and reasoning, we **AFFIRM** the summary judgment in favor of Wells Fargo and adopt its analysis in full.